

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JUL 15 2024

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United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3228

UNITED STATES OF AMERICA,  
APPELLEE

v.

DONALD J. TRUMP,  
APPELLANT

Appeal from the United States District Court  
for the District of Columbia  
(No. 1:23-cr-00257-1)

PRO SE AMICUS CURIAE

under 9th choice 1st speech & redress

July 2, 2024

To Whom it may concern, as the Supreme Court of the United States has surrendered it's original jurisdiction by "The judgment of the Court of Appeals for the D. C. Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion. " (C.J. Roberts 603 U. S. \_\_\_\_ (2024) DONALD J. TRUMP, PETITIONER v. UNITED STATES) to Court of Appeals for the D. C. Circuit; I submit this in aid of the duty imposed upon it.

"At a minimum, the President must be immune from prosecution for an official act unless the Government can show that applying a criminal prohibition to that act would pose no "dangers of intrusion on the authority and functions of the Executive Branch." Fitzgerald, 457 U. S., at 754. Pp. 12-15." Roberts ibid

It is at least gross incompetence or willful neglect of the majority, at the utmost it is purely partisan partiality which is destructive both of the good behavior commanded and impartiality sworn to in oath. Section 3 of the 25th amendment: "

*Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President."*

Not only opens the door and allows prosecution but tells the individual holding the office of President what they can do to protect the office they hold. That is of course if said individual feels such intrusion.

I ask what President would not want Prosecutors to punish law offenders regardless of their wealth or job?

"(b) The first step in deciding whether a former President is entitled to immunity from a particular prosecution is to **distinguish his official from unofficial actions**. In this case, **no court thus far has drawn that distinction**, in general or with respect to the conduct alleged in particular." ibid

Official actions are 1) in order to form a more perfect union[preamble], 2) Necessary [Art 1 sec 8 cl 18], 3) Proper [Art 1 sec 8 cl 18], and 4) in pursuance thereof [Art 6 cl 2]. These apply to the Legislative, Executive, and Judicial Branches by taking the oath of office to uphold support defend etc.etc. "This Constitution".

Unofficial actions are pardoning a Turkey this is a Public relations stunt. Holding Rallies and defaming libeling slandered members of your party or members of another party. (i.e. "Lock her up!") golfing, answering a civil DIVORCE suit file by "THE 1st SPOUSE" {not necessarily the first person the President has married( in current case it is the 3rd one)} A MAJOR UNOFFICIAL ACTION is under

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the color of power and authority of the office to entice or order a person to commit a crime.

Answering a civil DIVORCE suit has got to be more distracting more intrusive

"The indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions

A Sitting Presidents Amemalbility to Imditmeimt and Criminal Prosecution" again see section 3 25th

Then we have several if not numerous laws like

18 USC 1001

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) **Subsection (a) does not apply** to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) **With respect to any matter within the jurisdiction of the legislative branch**, subsection (a) shall apply only to—

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

Congress craved out some execeptions to the Law. THE COURT SHOULD NOTE, the individual holding the office of the president is not among craved out from prosecution in this statute.

**Mr. RANDOLPH.** The propriety of impeachments was a favorite principle with him. **Guilt wherever found ought to be punished.** The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. ..... Source::https://avalon.law.yale.edu/18th\_century/debates\_720.asp

### Most important:

Under the rule of Law in the United States, Immunity is in the purveiw of Prosecutorial Discretion. It can not be granted by Law or Court, without interfering with an investigation of an individual's criminal activity.

A legislature may impeach a prosecutor or a Court may look into abuse of power and authority in granting such imunnity by the prosecutor; but neither can command the exercise of discretion of a prosecutor in the Executive branch even though such holds a quisi judicial postion.

**Lastly there are no** "dangers of intrusion on the authority and functions of the Executive Branch." Fitzgerald, 457 U. S., at 754. Pp. 12–15."Roberts ibid, The Constitution protects the Office and the Office Protects the Constitution. The only danger is to the Individual holding the office and this is only when they act under color of office for a personal benefit.(i.e. Staying in office; which would have benefitted both Trump and Pence)

pages 3,4,5 included with this amicus was preveously sent to EnBanc Scotus

**Enbanc DC Court of Appeals** 430 E St NW, Washington, DC 20001

**District Judge Tanya S. Chutkan** U.S. District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington D.C. 20001

*Joseph L Westfall* 7-2-24  
Joseph L Westfall Pro Se July 2, 2024

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**IN THE SUPREME COURT OF THE UNITED STATES**

DONALD J. TRUMP, ) Petitioner, )

v. ) No. 23-939

UNITED STATES, ) Respondent

**PRO SE AMICUS**

**Answer to questions at Oral Arguments**

On question on Mr. Gerry's ratio of Electors Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. no. [FN6] [FN7] "to be removeable on impeachment and conviction for mal practice or neglect of duty." see Resol: 9. [FN8]

**Docr. FRANKLIN** was for retaining the clause as favorable to the Executive. *History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst. this as unconstitutional.* What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in wch. he was not only deprived of his life but of the opportunity of vindicating his character. *It wd.. be the best way therefore to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal when [FN10] he should be unjustly accused.*

**Mr. MADISON** thought it indispensable that some provision should be made for defending the Community agst. the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislature or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. *In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.*

**Source::** [https://avalon.law.yale.edu/18th\\_century/debates\\_720.asp](https://avalon.law.yale.edu/18th_century/debates_720.asp)

**Mr. Sauer took Franklin completely out of context as the above shows, not once but three times(pgs 16, 45, 63,)**

Mr. Franklin was "*for the regular punishment of the Executive where his misconduct should deserve it*"

Further down we find **Mr. GERRY** urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

And

**Mr. RANDOLPH.** The propriety of impeachments was a favorite principle with him. ***Guilt wherever found ought to be punished.*** The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. *Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections.* .....

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The unconstitutional denial of the 6th's amendment rights to confront and to have witness; by the Senate and not corrected by the presiding officer during the first impeachment of Petitioner Trump embolden him, instead of giving pause and correcting his actions.

**JUSTICE ALITO:** Mr. Sauer, you began by explaining why you believe that immunity from criminal prosecution is essential for the proper functioning of the presidency. But my question is whether the very robust form of immunity that you're advocating is really necessary in order to achieve that result. So just to take one possible alternative, suppose the rule were that a former president cannot be prosecuted for official acts unless no plausible justification could be imagined for what the president did, taking into account history and legal precedent and the information that was provided to the president at the time when the act was taken.

"Former Attorney General Bill Barr advised former President Trump that there was zero evidence of widespread fraud in the aftermath of the 2020 election, "

>> I have had three discussions with the president that I can recall.

One was on November 23. One was on December 1. One was on December 14. I have been through the give and take of those discussions. I made it clear **I did not agree with the idea of saying that election was stolen and putting out this stuff**, which I told the president was -- I didn't want to be part of it. That is one of the reasons that went into me deciding to leave when I did. I observed -- I think it was on December 1 -- **you can't live in a world where the incumbent administration stays in power based on its view, unsupported by specific evidence, that there was fraud in the election.**

Former Attorney General Bill Barr said in an interview with members of the House Jan. 6 committee

**JUSTICE ALITO:** Well, I don't want to dispute the particular application of --of that, of 371, conspiracy to defraud the United States, to the particular facts here, but would you not agree that that is a peculiarly open-ended statutory prohibition? In that -that fraud under that provision, unlike under most other fraud provisions, does not have to do --**doesn't require any impairment of a property interest.**

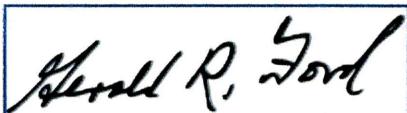
The Presidential Seal is the official symbol of the office of the President of the United States. Today it is used on all correspondence from the president and as a symbol of the presidency  
<https://www.whitehousegifts.com/pages/the-presidential-seal-a-brief-history>

As in Marbury (cited in these oral Arguments), **a property interest** existed in the commission.

The Petitioner had custody of this seal and his actions were to prevent transfer of custody to the President-Elect. The petitioner could no more keep this seal, than he could the records he is on trial for.

### **Proclamation 4311 (paragraph 3) GRANTING PARDON TO RICHARD NIXON**

**As a result of certain acts or omissions occurring before his resignation from the Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and on the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.**



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**JUSTICE GORSUCH:** And then the question becomes, as we've been exploring here today a little bit, **about how to segregate private from official conduct** that may or may not enjoy some immunity, and we --I'm sure we're going to spend a lot of time exploring that.

MR. SAUER: ...

a great source for this Court to rely on in **drawing this line**.

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**JUSTICE JACKSON:** All right. So one thing that occurs to me is that this sort of **difficult line-drawing problem that we're having with all of these hypotheticals, is this a private act or a public act**, is being necessitated by that assumption, because, of course, if official acts didn't get absolute immunity, then it wouldn't matter. We wouldn't have to identify which are private and which are public, correct?

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**JUSTICE KAGAN:** Okay. I have one last set of questions, which has to do with the **official/unofficial line**.

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**JUSTICE BARRETT:** Mr. Dreeben, I want to pick up with that public authority defense. .. but I'll just highlight this one: Justifying conduct which is required or authorized by the law defining the duties or functions of a public officer, the law governing the armed services or lawful conduct of war, or any other provision of law imposing a public duty. **That sounds a lot like dividing a line between official and private conduct**. I think it's narrower, and I recognize it's a defense

The Constitution has drawn the unknown line this court is inquiring about regarding **official vs individual capacity** for the individual holding the Title President of the United States.

**Is it "for a more perfect union", is it "necessary", is it "proper", is it "in pursuance thereof" and does it "take care the law is faithfully executed"**

**p.s.** The Court's dismissal for mootness of the emoluments case against the petitioner is in conflict with the court's Colorado ruling ordering the state to place petitioner on the ballot. If the mootness holds the injury can not re-occur and the petitioner is not eligible to cause the injury again. This means the petitioner is not eligible for any federal office elected or appointed. Further obtaining money (campaign funds ) for an office one is not eligible for is fraud upon those who donate such and the United States via matching funds from the U.S. Treasury via Public funding of presidential elections.

**"Under the presidential public funding program, eligible presidential candidates receive federal government funds to pay for the qualified expenses of their political campaigns in both the primary and general elections."**

<https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/>

EnBanc Scotus

*Joseph L. Westfall 7-2-24*

Joseph L. Westfall April 28, 2024 Done under 9th Choice, 1st Speech & Redress

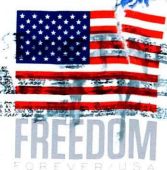
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